

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2002-79-C - ORDER NO. 2002-680
SEPTEMBER 23, 2002

IN RE: Application of ECI Communications DBA)
ITS Network Services for a Certificate of)
Public Convenience and Necessity to Operate)
as a Reseller of Intrastate Interexchange)
Telecommunications Services within the State)
of South Carolina and for Alternative)
Regulation.)

ORDER

This matter comes before the Public Service Commission of South Carolina (the "Commission") by way of the Application of ECI Communications, Inc. d/b/a ITS Network Services ("ECI" or the "Company") requesting a Certificate of Public Convenience and Necessity authorizing it to provide intrastate, interexchange telecommunications services within the State of South Carolina on a resale basis. The Company's Application was filed pursuant to S.C. Code Ann. § 58-9-280 (Supp. 2001), S.C.Code Ann. § 58-9-520 (Supp. 2001) and the rules and regulations of the Public Service Commission of South Carolina.

The Commission's Executive Director instructed ECI to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the affected areas. The purpose of the Notice of Filing was to inform interested parties of ECI's Application and of the manner and time in which to file the appropriate pleadings for participation in the

proceeding. ECI complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. No Petitions to Intervene were filed.

A hearing was convened on August 14, 2002, at 10:30 a.m. in the Commission's Hearing Room at 101 Executive Center Drive, Columbia, South Carolina. The Honorable Mignon Clyburn, Chairman, presided. Bonnie D. Shealy, Esquire, represented ECI. Jocelyn G. Boyd, Staff Counsel, represented the Commission Staff.

Ed Jacobs, President of ECI, appeared and testified on behalf of the Company. As President, Mr. Jacobs is responsible for the over-all performance of the Company including meeting profit objectives, customer satisfaction goals, and regulatory compliance. The testimony reveals that Mr. Jacobs has a Bachelor of Science degree in Computer Engineering from the University of California at Berkeley, and a Master of Business Administration degree from California State University at Sacramento. Prior to his current position, Mr. Jacobs was co-founder and President of LaRae Enterprises, a consulting and investment banking company, which specialized in acquisitions, financing, and business development in the telecommunications industry. From 1992 to 1997, Mr. Jacobs served as President, Chief Executive Officer, and Chairman of National Telephone and Communications (NTC), a reseller of long distance telephone services. Further, Mr. Jacobs was instrumental in increasing annual revenues from \$4 million to over \$100 million during his five year tenure. Prior to Mr. Jacobs' employment with NTC, he co-founded Dataaccount Corporation, a financial services company specializing in payroll operations, and previously was employed by MacDonnell Douglas.

ECI was incorporated in the State of Nevada on September 20, 2000. The Company uses independent distributors in each state where it does business. ECI uses a

screening process to determine if the distributor meets the Company criteria and thereafter potential distributors are interviewed. If the distributor is selected, he must complete the Company's training program.

ECI seeks to operate as a reseller of telecommunications services within South Carolina. The Company also requests that the Commission regulate its long distance business service offerings, consumer card, and operator services in accordance with the principles and procedures established for relaxed regulation in Order Nos. 1995-1734 and 1996-55 in Docket Number 1995-661-C. Global Crossings will serve as ECI's underlying carrier and Global Crossings will provide outbound switched, inbound switched, calling card services, and directory assistance. ECI will purchase Global Crossings' services pursuant to the terms and conditions set forth in the underlying carrier's FCC tariffs and Global Crossings' state tariffs.

Jacobs testified that other than directory assistance, carriers offer volume interstate and international discounts on their long distance. Further, because of the interstate discounts available to ECI, ECI is able to share some of that discount with the customer. The testimony reveals that ECI is able to offer services to its customers at a rate that is lower than what the customer is presently paying. Additionally, the testimony states that by pooling the traffic of its customers, ECI is able to achieve the volumes necessary to obtain substantial discounts available from the carrier. ECI buys at wholesale from the underlying carrier and sells the service at retail under the Company's name.

The record also reveals that all transmission facilities in South Carolina are provided by the underlying carrier. In addition to ECI's own customer service

department, the Company will also be relying on Global Crossings to supply the necessary technical expertise to provide telecommunications service in South Carolina. Jacobs testified that the underlying carrier provides billing tapes of all call detail. The intrastate call detail records are then sorted by ECI customer and are rated at the rates included in ECI's intrastate tariff. A bill is generated monthly for the customer and sent directly to the customer by ECI.

According to the testimony, ECI does not have offices in South Carolina. ECI uses independent distributors located in each state where it does business. After a screening process to determine if the distributor meets the Company criteria, potential distributors are interviewed. If the distributor is selected by ECI, he must complete the Company's training program. Jacobs also testified that independent sales agents will contact potential customers by telephone and in person and must have all marketing materials approved by the Company.

Regarding the Company's managerial resources to provide telecommunications services in South Carolina, Jacobs stated that the officers of the Company have extensive managerial and technical experience in the telecommunications industry. Mr. Calvin Wong is the Company's Chief Executive Officer and Chairman and Mr. Alex Soong is its Secretary and Director. According to the record, Mr. Wong is currently president of Hyperzone Holding Corporation, a company specializing in the financing of telecommunications and internet-related companies. Mr. Wong was a co-founder of Community Connect, Inc., a company providing online internet services to more than four million subscribers. The record also reveals that Mr. Wong was instrumental in obtaining over \$20 million in funding for the company. Regarding Mr. Soong's

employment history, prior to joining ECI, Mr. Soong was employed by Telcordia, where he was responsible for designing and developing integrated network architecture for specialized databases use in information modeling. Mr. Soong also served as President of the Institute of Electrical and Electronic Engineers. The record states that Mr. Soong has a MS degree from Columbia University and a BS degree from Rutgers University.

Regarding the Company's financial resources to provide telecommunications services in South Carolina, as part of its Application, ECI provided the Commission with a copy of its balance sheet and income statements as of December 31, 2001. Jacobs opined that these financial statements demonstrate that ECI has access to sufficient financial resources to provide telecommunications services in South Carolina and to meet its cash needs.

Regarding the Company's marketing strategy in South Carolina, ECI markets its services on both a regional and local basis. After receiving certification, ECI will select, appoint, and train authorized distributors in South Carolina. These distributors will call on potential customers to offer ECI's interstate telecommunications services. ECI offers South Carolina intrastate services only in conjunction with interstate services. A South Carolina customer could also be acquired as part of a regional account. The Company does not intend to use telemarketing in South Carolina.

ECI has been certified or otherwise authorized to provide intrastate resale services in several states including Florida, Nevada, New Hampshire, Ohio, and Vermont. The Company seeks exemption from any policy that might require a carrier to maintain its financial records in accordance with the Uniform System of Accounts. Jacobs testified that ECI, as a competitive carrier, maintains its books in accordance with Generally

Accepted Accounting Principles; and therefore, does not possess the detailed cost data required by the Uniform System of Accounts. ECI also specifically requests a waiver of 26 S.C. Code Ann. Regs. 103-610 that a carrier keep all records required by the Commission's rules and regulations within the State of South Carolina. The Company's corporate offices are in California; therefore Jacobs testified that maintaining its books and records in South Carolina would be unduly burdensome and ECI will have a registered agent in South Carolina and will bear any costs associated with the Commission's inspection of its books and records. The Company has also requested alternative regulation of its long distance services as established by Order Nos. 1995-1734 and 1996-55 in Docket No. 1995-661-C and as modified by Order No. 2001-997 in Docket No. 2000-407-C.

After full consideration of the applicable law, the Company's Application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

FINDINGS OF FACT

1. ECI is organized as a corporation under the laws of the State of Nevada and is authorized to do business as a foreign corporation in the State of South Carolina by the Secretary of State.
2. ECI is a provider of long distance services and wishes to provide long distance services in South Carolina.
3. ECI has the experience, capability, and financial resources to provide the services as described in its Application.

CONCLUSIONS OF LAW

1. Based on the above findings of fact, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to ECI to provide resold intrastate interLATA service and to originate and terminate toll traffic within the same LATA, as set forth herein, through the resale of intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications Service (MTS), Foreign Exchange Service, Private Line Service, or any other services authorized for resale by tariffs of carriers approved by the Commission.

2. The Commission adopts a rate design for ECI for its resale of residential interexchange services which includes only maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

3. ECI shall not adjust its residential interexchange rates below the approved maximum level without notice to the Commission and to the public. ECI shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level for residential interexchange

services reflected in the tariff, which would be applicable to the general body of the Company's subscribers, shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provision of S.C. Code Ann. §58-9-540 (Supp. 2000).

4. If it has not already done so by the date of issuance of this Order, ECI shall file its revised tariff and an accompanying price list within thirty (30) days of receipt of this Order. The revised tariff shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations. Further, ECI shall file a copy of its Bill Form as required by 26 S.C. Code Ann. Regs. 103-612.2.2 and 103-622.1 with its final Tariff.

5. ECI is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that for access purposes resellers and facilities-based interexchange carriers should be treated similarly.

6. With regard to ECI's resale of service, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

7. ECI shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If ECI changes underlying carriers, it shall notify the Commission in writing.

8. ECI shall file surveillance reports on a calendar or fiscal year basis with the Commission as required by Order No. 88-178 in Docket No. 87-483-C. The proper form for these reports can be found at the Commission's website at www.psc.state.sc.us/forms. The title of this form is "Annual Information on South

Carolina Operations For Interexchange Companies and AOS””. Be advised that the Commission’s annual report for telecommunication companies requires the filing of intrastate revenues and intrastate expenses. ECI shall file annual financial information in the form of annual reports and gross receipts reports as required by the Commission. The annual report and the gross receipt report will necessitate the filing of intrastate information. Therefore, ECI shall keep financial records on an intrastate basis for South Carolina to comply with the annual report and gross receipts filings. The proper form for filing annual financial information can be found at the Commission’s website at www.psc.state.sc.us/forms. The title of this form is “Annual Information on South Carolina Operations for Interexchange Companies and AOS.” This form shall be utilized by the Company to file annual financial information with the Commission. Commission gross receipts forms are due to be filed with the Commission no later than October first of each year.

9. ECI shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, ECI shall provide to the Commission in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours. ECI shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The “Authorized Utility Representative Information” form can be found at the Commission’s website at www.psc.state.sc.us/forms; this form shall

be utilized for the provision of this information to the Commission. Further, ECI shall promptly notify the Commission in writing if the representatives are replaced.

10. With regard to the origination and termination of toll calls within the same LATA, ECI shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993), with the exception of the 10-XXX intraLATA dialing requirement, which has been rendered obsolete by the toll dialing parity rules established by the Federal Communications Commission pursuant to the Telecommunications Act of 1996 (See, 47 CFR 51.209).

11. By its Application and testimony at the hearing, ECI requested a waiver from the Commission's requirement to maintain its books within the State of South Carolina according to 26 S.C. Code Ann. Regs. 103-610 (1976). The Commission grants ECI's request to waive the record keeping regulation so that its books and records may be kept at its principal office and headquarters in California. We also grant the Company's request to maintain its books in accordance with GAAP.

12. The Commission adopts a rate design for the business type long distance services of ECI which are consistent with the principles and procedures established for alternative regulation of business service offerings set out in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C and modified by Order No. 2001-997.

Under the Commission approved modified alternative regulation, the business service offerings of ECI, including consumer card services and operator services, are subject to a relaxed regulatory scheme identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. However,

pursuant to Order No. 2001-997 (Docket No. 2000-407-C), this Commission has modified alternative regulation by the re-imposition of rate caps with regard to certain “operator-assisted calls” where a customer uses a local exchange carrier’s calling card to complete calls from locations which have not selected that local exchange carrier as the toll provider. Order No. 2001-997, dated November 8, 2001, imposed a maximum cap of \$1.75 for operator surcharges for such calls, and a maximum cap of \$0.35 related to the flat per-minute rate associated with these calls. Under this relaxed regulatory scheme, tariff filings for business services shall be presumed valid upon filing. The Commission will have seven (7) days in which to institute an investigation of any tariff filing. If the Commission institutes an investigation of a particular tariff filing within seven days, the tariff filing will then be suspended until further Order of the Commission. Any relaxation in the future reporting requirements that may be adopted for AT&T shall apply to ECI also.

13. Each telecommunications company certified in South Carolina is required to file annually the Intrastate State Universal Service Fund (USF) worksheet. This worksheet provides the Commission Staff information required to determine each telecommunications company’s liability to the State USF fund. The Intrastate USF worksheet is due to be filed annually no later than August 15th.

14. ECI is directed to comply with all Rules and Regulations of the Commission, unless a regulation is specifically waived by the Commission.

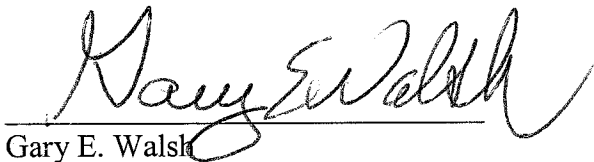
15. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Mignon L. Clyburn
Chairman

ATTEST:



Gary E. Walsh
Executive Director

(SEAL)